

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

JAMES WILLIAM LOVELACE

Petitioner,

v.

BRICE HOWARD, Warden,

Respondent.

Case No. CIV-07-224-RAW

ORDER

On August 9, 2010, Magistrate Judge Kimberly E. West filed a Report and Recommendation, recommending that this action (commenced by the Petitioner's filing of a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254) be in all respects dismissed. On August 20, 2010, the Petitioner filed an Objection to the Magistrate Judge's Report and Recommendation, arguing: (1) that the State did not prove all of the elements for the possession conviction beyond a reasonable doubt;* (2) his constitutional rights were violated because Officer Hope had no authority to make the arrest; (3) his constitutional rights were violated when "illegally seized evidence" was presented at his trial; (4) he received ineffective assistance of appellate counsel; (5) his constitutional rights were violated when he was not allowed to test evidence and present his own expert, and (6) he received ineffective assistance of trial counsel. Petitioner also requests an evidentiary hearing.

*In his Objection, under ground one, Petitioner "points out" that the Magistrate Judge relied on Eastlick v. State, 90 P.3d 556 (Okla. Crim. App. 2004), a case that was decided five years after Petitioner's conviction. Not that it would change the outcome here if the Magistrate Judge had relied on that case, the court points out that the Magistrate Judge did not rely on that case. The Magistrate Judge cited a portion of the Oklahoma Court of Criminal Appeals' opinion in the direct appeal of Petitioner's case citing that case.

After a *de novo* review, and construing Petitioner's *pro se* filings liberally, the court finds that the Magistrate Judge's Report and Recommendation is well-supported by the evidence and the prevailing legal authority. As a result, Petitioner's objections to the Report and Recommendation are overruled. Accordingly, the Report and Recommendation of United States Magistrate Judge West is hereby AFFIRMED and ADOPTED as this court's Findings and Order. Petitioner's petition pursuant to 28 U.S.C. § 2254 is hereby DISMISSED.

IT IS SO ORDERED this 17th day of September, 2010.

Dated this 17th Day of September 2010.

A handwritten signature in black ink, reading "Ronald A. White". The signature is written in a cursive, flowing style.

Ronald A. White
United States District Judge
Eastern District of Oklahoma

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